

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ALIDA LEHMEYER, on behalf herself
and others similarly situated,

Civil. No. 15-02419 (HB)

Plaintiff,

v.

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT**

MESSERLI & KRAMER, P.A.,

Defendant.

HILDY BOWBEER, United States Magistrate Judge

This matter is before the undersigned United States Magistrate Judge on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement filed on March 25, 2016 [Doc. No. 36].¹ Plaintiff Alida Lehmeier is represented by Aaron D. Radbil, J D Haas, James L. Davidson, and Jesse S. Johnson. Defendant Messerli & Kramer, P.A. is represented by Derrick N. Weber. All capitalized terms in this Order have the same meanings given to them in the Parties' Class Action Settlement Agreement (Johnson Decl. ("Settlement Agreement") [Doc. No. 42]).

¹ The parties have consented to the exercise of jurisdiction by the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1).

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and having reviewed Plaintiff's Unopposed Motion, reviewed the Settlement Agreement and exhibits, and considered all of the filings, records, and pleadings in this case, **IT IS HEREBY ORDERED** that Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement [Doc. No. 36] is **GRANTED** as follows:

1. The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.
2. The representations, agreements, terms, and conditions of the parties' proposed settlement, as embodied in the Settlement Agreement and the exhibits attached thereto, are preliminarily approved as set forth below.
3. In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, Defendant will cause to be served written notice of the proposed class settlement on the United States Attorney General and the Attorney General of the State of Minnesota.
4. For purposes of the Proposed Settlement only, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court hereby preliminarily certifies, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (hereinafter referred to as the "Class Members") with respect to the claims asserted in the Lawsuit:

All persons with a Minnesota address to whom Messerli & Kramer P.A. mailed an initial debt collection communication that stated: “If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you,” between May 6, 2014 and May 6, 2015, and not returned by the postal service as undeliverable, in connection with the collection of a consumer debt on behalf of Bank of America, N.A. [Settlement Agreement at 4].

5. Defendant represents that there are 297 Class Members, including Plaintiff Alida Lehmeyer.

6. Pursuant to Fed. R. Civ. P. 23, the Court appoints Plaintiff Alida Lehmeyer as the Class Representative. The Court also appoints Jesse S. Johnson of Greenwald Davidson Radbil PLLC as Class Counsel.

7. The parties do not dispute, and the Court finds, that the Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable, satisfying the numerosity requirement of Federal Rule of Civil Procedure 23(a)(1).

8. There are questions of law and fact common to the Class Members, which predominate over any individual questions.

9. The claims of the Plaintiff are typical of the claims of the Class Members.

10. The Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Class Members.

11. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

12. Subject to consideration of submissions in connection with the Final Approval Hearing, including any objections that may be filed, the Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of the benefits to the Class Members; the strengths and weaknesses of Plaintiff's case; the anticipated complexity and expense of additional litigation; the risk and delay inherent in possible appeals; the limited amount of any potential total recovery for the Class, given the cap on statutory damages for claims brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*; and the opinion of Class Counsel, who is highly experienced in this area of class action litigation.

13. No later than **April 25, 2016**, Defendant will provide notice to the appropriate federal and state officials, as required by 28 U.S.C. § 1715.

14. Defendant will administer the settlement and notification to Class Members. Defendant will be responsible for mailing the approved class action notice and settlement checks to the Class Members. All costs of administration will be paid by Defendant separate and apart from the Settlement Fund.

15. The Court approves the form and substance of the Notice of Class Action Settlement, attached to the Settlement Agreement as Exhibit B, subject to the inclusion in the Notice of the dates set forth herein. The proposed form and method for notifying the Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under

the circumstances, and constitute due and sufficient notice to all persons entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Class Members of their rights. In accordance with the Settlement Agreement, Defendant will mail the notice to the Class Members as expeditiously as possible, but in no event later than thirty days after the Court's entry of this order, *i.e.*, **no later than May 16, 2016**.

Before sending the notices, Defendant will have updated the addresses for the Class Members using its standard methodology for updating addresses.

16. Any Class Member who desires to be excluded from the class must send a written request for exclusion to Class Counsel with a postmark date no later than sixty days after the Court's entry of this order, *i.e.*, **no later than June 14, 2016**. To be effective, the written request for exclusion must state the Class Member's full name, address, telephone number, and email address (if available), along with a statement that the Class Member wishes to be excluded. Any Class Member who submits a valid and timely request for exclusion will not be bound by the terms of the Settlement Agreement.

17. Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within sixty days after the Court's entry of this order, *i.e.*, no later than **June 14, 2016**. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, attention: Jesse S. Johnson, Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton, FL 33431; and Counsel for Defendant, Derrick N. Weber, Messerli & Kramer, P.A., 3033 Campus Drive, Suite 250, Plymouth, MN 55441.

18. To be effective, a notice of intent to object to the Settlement must:
- a. Contain a heading which includes the name of the case and case number;
 - b. Provide the name, address, telephone number and signature of the Class Member filing the objection;
 - c. Be filed with the Clerk of the Court no later than sixty days after the Court preliminarily approves the settlement. A class member may file an objection by mailing the objection to:

Clerk of Court
United States District Court for the District of Minnesota
Warren E. Burger Federal Building and U.S. Courthouse
Suite 100
316 North Robert Street
St. Paul, MN 55101;
 - d. Be sent to Class Counsel and Defendant at the addresses designated in the Notice by first-class mail, postmarked no later than sixty days after the Court preliminarily approves the settlement;
 - e. Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the District of Minnesota;
 - f. A statement of the specific basis for each objection; and
 - g. A list of any legal authority the objector will present at the Final Approval Hearing.

19. Any Class Member who has timely filed an objection may appear at the Settlement Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

20. The Court will conduct a hearing on **August 8, 2016, at 1:30 p.m.** at the United States District Court for the District of Minnesota, Warren E. Burger Federal Building and U.S. Courthouse, Courtroom 6B, 316 North Robert Street, **SAINT PAUL**, MN 55101, to review and rule upon the following issues:

- a. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Fed. R. Civ. P. 23;
- b. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;
- c. Whether a Final Order and Judgment, as provided under the Settlement Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing the Released Claims against the Released Parties; and
- d. To discuss and review other issues as the Court deems appropriate.

21. Attendance by Class Members at the Final Approval Hearing is not necessary. Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Class Members wishing to be heard are, however, required to appear at the Final Approval Hearing. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice.

22. The parties will file a Motion for Final Approval of the proposed settlement, together with a proposed Final Approval Order, no later than fourteen days prior to the Final Approval Hearing, *i.e.*, **no later than July 25, 2016**. The Motion and Final Approval Order shall include memoranda in support of the proposed settlement addressing the fairness, adequacy and reasonableness of the Proposed Settlement, responses to any objections, petitions for attorney's fees and reimbursement of costs and expenses by Class Counsel,² exclusion from the Settlement Class of those persons who properly and timely submitted statements of exclusion, and entry of judgment dismissing the Lawsuit on the merits and with prejudice.

23. By **July 25, 2016**, Defendant will file with the Court a declaration certifying that notice has been provided to the Settlement Class as directed in this Order and that notice has been provided to the appropriate federal and state officials, as required by 28 U.S.C. § 1715.

² The Court notes that the Settlement Agreement included a provision for a payment of "approved attorney's fees" of no more than \$30,000.00. The Court must receive a specific request specifying the amount of requested attorney's fees and documentation supporting the same.

24. Upon the entry of final judgment after the Final Approval Hearing, Plaintiff and all Class Members (except those who have served timely exclusions) shall be forever barred from asserting against Released Parties any Released Claims in accordance with the Settlement Agreement, and Plaintiff and all Class Members shall be conclusively deemed to have released any and all such claims.

25. Following the entry of final judgment after the Final Approval Hearing, and upon the Effective Date as defined in the Settlement Agreement only persons who are Class Members and who have not requested exclusion shall be entitled to the settlement benefits.

26. If for any reason the Settlement Agreement ultimately does not become effective, this Order preliminarily certifying a class and preliminarily approving the settlement shall be vacated; the parties shall return to their respective positions in this lawsuit as those positions existed immediately before September 23, 2015, and nothing stated in the Settlement Agreement or in this Order shall be deemed an admission or waiver of any kind by any of the parties or used as evidence against, or over the objection of, any of the parties for any purpose in this action or in any other action or proceeding of any kind.

27. The parties are ordered to take all reasonable steps necessary to complete this settlement in compliance with the following timeline:

Date	Event
April 15, 2016	Preliminary Approval Order entered
April 25, 2016	Defendant will provide notice to federal and state officials as required by 28 U.S.C. § 1715
May 16, 2016	Notice of Class Action Settlement sent to all Class Members
June 14, 2016	Deadline to send Statement of Exclusion Deadline to file Objection to Settlement
July 25, 2016	Deadline to file Motion for Final Approval and supporting documents, including memoranda in support of the proposed settlement, responses to any objections, petitions for attorney's fees and reimbursement of costs and expenses by Class Counsel
July 25, 2016	Deadline for Defendant to file declaration certifying that notice has been mailed to the Settlement Class, and that notice has been given to federal and state officials
August 8, 2016, at 1:30 p.m.	Final Approval Hearing

BY THE COURT:

Dated: April 15, 2016

s/ Hildy Bowbeer
HILDY BOWBEER
 United States Magistrate Judge